

Remarks

Status of the Claims

Claims 1-9, 11-26, and 28-34 were pending in the application. All claims stand rejected. By this paper, claims 1 and 18 have been amended, and claims 16, 17, 33, and 34 have been canceled without prejudice or disclaimer. For the reasons set forth below, Applicant submits that each of the pending claims is patentably distinct from the cited prior art and in condition for allowance. Reconsideration of the claims is therefore respectfully requested.

Interview Summary

Applicant would like to thank Examiner Janice Mooneyham and Examiner Heidi Riviere for the personal interview extended to the Applicant's counsel of record, Kory D. Christensen, on February 4, 2010. During the interview, Applicant clarified patentably distinguishing features of the invention and discussed proposed amendments to claim 1. Applicant has amended the claims herein to address questions raised by the Examiners during the interview and respectfully requests reconsideration of the amended claims.

Claim Rejections – 35 U.S.C. § 101

Claims 1-9 and 11-17 stand rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Applicant has amended independent claim 1 herein to clarify that the determining and identifying steps are performed by a processor, as suggested by the Examiner. Accordingly, Applicant

requests that the rejection of claim 1 be withdrawn. As claims 2-9 and 11-15 depend either directly or indirectly from claim 1, Applicant also requests that the rejection of these dependent claims also be withdrawn.

Claim Rejections - 35 U.S.C. § 103

Claims 1-9, 11-26, and 28-34 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent Application Publication No. 2002/0065037 by Messina et al. ("Messina") in view of U.S. Patent No. 6,574,465 issued to Marsh et al. ("Marsh") and further in view of U.S. Patent No. 7,206,765 issued to Gilliam et al. ("Gilliam"). This rejection is respectfully traversed. As set forth below, Applicant respectfully submits that each of the pending claims is patentably distinct from the cited references, individually and collectively.

Because it is increasingly cumbersome to manage an increasing number of online subscriptions to audio stream sources, the present invention automatically identifies upgrade packages that would allow a user to access a desired online audio stream source, for which the user currently does not have permission to access. The present invention determines upgrade costs based on the value of required authorizations already possessed by the user. For example, a particular upgrade package may include access to one or more online audio stream sources that the user already has permission to access through current subscription packages.

Applicant has amended claim 1 herein to clarify that a plurality of the user's online subscriptions to online audio stream sources are managed so as to reduce or

avoid redundant online subscriptions paid for by the user. See, e.g., paragraph [0010] of the published application (U.S. 2005/0027545). Amended claim 1 states, in part:

...in response to the determination that the user is denied access to the first online audio stream source based on the user's current online subscription packages, identifying, using the processor, a plurality of upgrade packages that would allow the user to access the first online audio stream source;

determining, using the processor, an undiscounted upgrade cost associated with each of the identified upgrade packages;

determining, using the processor, that at least one of the identified upgrade packages requires a prerequisite online audio stream source package;

increasing, using the processor, the undiscounted upgrade cost of each identified upgrade package that requires the prerequisite online audio stream source package;

determining, using the processor, a list of required authorizations already possessed by the user for access to one or more second online audio stream sources included in the identified upgrade packages and the prerequisite online audio stream package;

discounting, using the processor, the upgrade cost associated with each of the identified upgrade packages based on the required authorizations already possessed by the user;

receiving, at the processor, a user selection of one of the identified upgrade packages;

in response to the user selection, charging the user the discounted cost of the selected upgrade package.

Similar amendments have been made to independent claim 18. Support for the amendments may be found, for example, in FIG. 5 and associated text of the present application. As discussed in detail below, Applicant respectfully submits that Messina, Marsh, and Gilliam, whether considered individually or when combined, fail to teach or suggest the subject matter of the present claims, as amended herein.

1. Messina, Marsh, and Gilliam, either individually or when combined, do not teach or suggest, in response to determining that a user is denied access to a first online audio stream, identifying one or more upgrade packages that would allow access.

As discussed above, the present invention is directed to managing a plurality of subscriptions to online audio stream sources. When a user's request for access to a first online audio stream source is denied, the claims require identifying a plurality of upgrade packages that would allow the requested access. Applicant respectfully submits that neither Messina, Marsh, nor Gilliam make a response to a determination that access is denied by identifying upgrade packages for online audio stream sources. Rather, Messina, Marsh, and Gilliam are silent as to the subject matter of the amended claims.

Messina teaches a satellite radio that provides audio to users having the appropriate subscription. See, paragraph [0006] of Messina. Messina, however, does not address subscriptions to online audio streams or responding to a denial of access to a particular online audio stream by identifying a plurality of upgrade packages that would allow the user access to the online audio stream. While paragraph [0021] of Messina confirms a customer's data request against currently enabled services, Messina is otherwise completely unrelated to the claims of the present application.

Marsh describes "a system and method for analyzing wireless communication data for determining an optimal wireless communication service plan." Abstract. Marsh's system "provides an analysis of periodically loaded wireless service usage of a given account or subscriber...." Col. 8, lines 31-33. However, Marsh does not indicate that the determination of an optimal wireless communication service plan is in response to determining that access to a particular online audio stream source, or to any other

service or data source, is denied. Rather, the determination of the optimal wireless communication service plan is simply repeated on a periodic basis. See, block 180 in FIG. 3. Indeed, page 6 of the Office Action concedes that Marsh does not determine if the user has access to a data source. Thus, because Marsh does not know or care that access is denied, it stands to reason that Marsh does not determine one or more upgrades that would provide access to the denied data.

Gilliam is also silent as to responding to a determination of denied access by identifying upgrade packages that would allow access to the denied data. Rather, Gilliam describes a method and system for “enforcing rights expressions specifying manners of use of an item.” Col. 3, lines 7-8, 20-21. Gilliam is directed to comparing rights expression to determine whether access will be granted or denied. Col. 41, line 52 to col. 42, line 3. As shown in FIG. 9 of Gilliam, the ***enforcement process of Gilliam ends when access is either granted or denied.*** Gilliam is silent as to executing the claimed operations after access is denied.

2. Messina, Marsh, and Gilliam, either individually or when combined, do not teach or suggest determining an upgrade cost based on a value of required authorizations already possessed by the user.

As discussed above, an aspect of the present application is that an undiscounted upgrade cost of each identified upgrade package may be discounted based on required authorizations already possessed by the user.

As discussed above, Messina does not identify a plurality of upgrade packages. Accordingly, Messina is completely silent as to determining undiscounted or discounted costs associated with any identified upgrade packages.

Applicant respectfully submits that neither Marsh nor Gilliam determine an upgrade cost that is discounted for required authorizations already possessed by the user.

With reference to Marsh, col. 7, line 22 to col. 8, line 50, pages 4 and 5 of the Office Action assert that

when plan choices are evaluated a user stored information is reviewed; for example, "zip codes, symbolic of where the user can purchase service (at least their home zip code and possibly one or more zip codes of locations for the user's place of employment) from the user profile are used to find packages"; packages are organized from lowest cost to highest cost)

However, while the costs of different service plans may be based on zip codes, Marsh does not teach or suggest basing the costs on required authorizations already possessed by the user. Further, Marsh does not teach or suggest discounting the cost of a plan based on authorizations already possessed by the user.

Applicant respectfully submits that Gilliam is silent as to determining upgrade costs associated with identified upgrade packages.

3. Messina, Marsh, and Gilliam, either individually or when combined, do not teach or suggest determining that an identified upgrade package requires a prerequisite audio stream source package or increasing the undiscounted upgrade cost for the prerequisite online audio stream source package.

As discussed above, claim 1 has been amended herein to recite, among other things:

determining, using the processor, that at least one of the identified upgrade packages requires a ***prerequisite online audio stream source package***;

increasing, using the processor, ***the undiscounted upgrade cost*** of each identified upgrade package that requires the prerequisite online audio stream source package;

(emphasis added). Independent claim 18 has been amended herein to include similar limitations.

As discussed above, Messina does not identify a plurality of upgrade packages. Applicant further respectfully submits that Messina is completely silent as to determining any prerequisite online audio stream source packages for an identified upgrade package.

Marsh is also silent as to determining that at least one identified upgrade package requires a prerequisite online audio stream source package. Page 18 of the Office Action asserts that Marsh discloses:

determining an upgrade cost for each of the upgrade packages includes determining which of the upgrade packages requires one or more prerequisite online audio stream source packages. (Marsh: col. 8, lines 28-42; col. 9, lines 13-30; col. 17, lines 53-67; col. 18, Tables 6-7 – calling profile of customer assessed based on usage time of day, geographic location and type of calls made; plan options sorted by costs).

(Emphasis in original). Pages 19 and 20 of the Office Action cite these same portions of Marsh for the assertion that Marsh teaches increasing the undiscounted costs based on costs associated with the prerequisite source packages. Applicant respectfully disagrees. None of the cited portions of Marsh are related to determining that at least one identified upgrade package requires a prerequisite online audio stream source package, let alone increasing costs based on the prerequisites. Col. 8, lines 28-42 of Marsh discuss suggesting alternative cellular service plans based on usage patterns, but is completely silent as to any prerequisites. Col. 9, lines 13-30 discusses mapping the usage information. Mapping usage information, such as when calls are made/received, time-of-day, local or toll, zip codes, or any other characteristic of a calling plan, is completely unrelated to the current claims.

Col. 17, lines 53-67 of Marsh teaches determining the attractiveness of a calling service plan by comparing the plan to actual (historical) usage. Tables 6 and 7 of Marsh provide respective examples of a historical prediction model for calling plans. Again, historical usage of a calling plan is unrelated to the present claims and is silent as to *prerequisite* online audio stream source packages that are required for an identified upgrade package in order to access a desired online audio stream source.

Applicant respectfully asserts that independent claim 1 must be read as a whole to appreciate the context of the respectively claimed elements. See, 35 U.S.C. § 103(a) (requiring that obviousness be based on “the subject matter as a whole”) (emphasis added). Section 2141.02 of the M.P.E.P. states that in “determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” (Emphasis in original).

Applicant respectfully submits that citing Marsh, which finds a calling plan based on a user’s historical calling usage, does not fairly or accurately teach or suggest the subject matter of the present claims, as amended herein, when considered as a whole.

Conclusion

For at least the foregoing reasons, the cited prior art references, whether considered individually or in combination, fail to disclose each of the limitations in any of the pending independent claims. For at least the same reasons, each of the claims depending therefrom are also patentably distinct from the cited prior art.

In view of the foregoing, all pending claims represent patentable subject matter.

A Notice of Allowance is respectfully requested.

Respectfully submitted,

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